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TERADATA US, INC., and  
TERADATA OPERATIONS, INC.

UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA  
SAN FRANCISCO DIVISION

TERADATA US, INC.,  
Plaintiff,  
and  
TERADATA CORPORATION and  
TERADATA OPERATIONS, INC.,  
Plaintiffs/Counterclaim-Defendants,  
v.  
SAP SE,  
Defendant/Counterclaim-Plaintiff,  
and  
SAP AMERICA, INC. and  
SAP LABS, LLC,  
Defendants.

Case No. 3:18-cv-03670-WHO (JCS)

**STIPULATION AND [PROPOSED]  
ORDER TO CERTIFY JUDGMENT  
UNDER FEDERAL RULE OF CIVIL  
PROCEDURE 54(b) AND TO STAY  
CASE PENDING APPEAL**

1 Plaintiffs/Counterclaim-Defendants Teradata Corporation and Teradata Operations, Inc.  
 2 and Plaintiff Teradata US, Inc. (collectively, “Teradata”) and Defendants/Counterclaim-Plaintiffs  
 3 SAP SE and Defendants SAP America, Inc. and SAP Labs, LLC (collectively, “SAP”) hereby  
 4 jointly request and stipulate to the following: (1) entry of judgment under Federal Rule of Civil  
 5 Procedure 54(b) on Teradata’s technical trade secret claims and tying claims; and (2) stay of  
 6 Teradata’s business trade secret claims and SAP’s patent counterclaims pending resolution of  
 7 Teradata’s appeal on the technical trade secret and tying claims.

8 When an action involves multiple claims, Rule 54(b) authorizes district courts to enter  
 9 judgment on finally adjudicated claims when there is no just reason to delay appellate review of  
 10 those claims. Those circumstances are present here. And a stay of Teradata’s business trade  
 11 secret claims and SAP’s patent counterclaims pending resolution of Teradata’s appeal of the  
 12 Rule 54(b) judgment will avoid the need for two separate jury trials in this action if the court of  
 13 appeals reverses the summary judgment decision, conserving judicial and party resources.

#### 14 **I. BACKGROUND**

15 Teradata sued SAP, asserting claims for trade secret misappropriation and violations of  
 16 the Sherman and Clayton Acts, among others. Dkt. No. 67 at 28-36. SAP counterclaimed for  
 17 alleged infringement of certain of its patents. Dkt. No. 104 at 34-64. After three years of  
 18 litigation, including many interlocutory rulings by the Court, the following claims remained:

19 Teradata’s technical trade secret claims: These claims center on SAP’s alleged  
 20 misappropriation of Teradata’s technical trade secrets, which concern database features such as  
 21 specific ways of selecting large volumes of data to solve problems arising in massively parallel  
 22 processing (“MPP”) databases. *See, e.g.*, Dkt. No. 259-3 at 79-86.

23 Teradata’s business trade secret claims: These claims relate to SAP’s alleged  
 24 misappropriation of Teradata’s business trade secrets, which concern Teradata’s allegedly  
 25 competitive information, pricing, and customer-specific information that several former Teradata  
 26 employees allegedly provided to their SAP colleagues. Dkt. No. 464-14 at 10-13.

27 Teradata’s tying claim: This claim concerns SAP’s allegedly unlawful tie of its HANA  
 28 database to its S/4HANA Enterprise Resource Planning application. *E.g.*, Dkt. No. 67 at 18-28,

1 32-36.

2 SAP's patent infringement counterclaims: These counterclaims allege that certain  
3 Teradata products, including Teradata Database, infringe U.S. Patent Nos. 9,626,421; 8,214,321;  
4 and 7,617,179, which generally relate to database technology. Dkt. No. 123 at 33-34, 40, 54; Dkt.  
5 Nos. 124, 124-1, 124-3.

6 On November 8, 2021, this Court issued an order on the parties' summary judgment  
7 motions and motions to exclude expert testimony. Dkt. No. 603. Among other rulings, the Court  
8 granted SAP's motion for summary judgment on Teradata's technical trade secret claims and on  
9 Teradata's tying claim after excluding portions of Teradata's expert testimony. The Court also  
10 granted Teradata's motion for summary judgment on one of SAP's counterclaims for patent  
11 infringement, holding the asserted claims of the '321 patent invalid. *Id.* at 64.

12 As a result of that order, the claims remaining in this litigation are Teradata's business  
13 trade secret claims and SAP's other counterclaims for patent infringement. Trial on those claims  
14 is scheduled to begin on January 31, 2022. Dkt. No. 402 at 1.

## 15 **II. ARGUMENT**

### 16 **A. This Court Should Enter Final Judgment Under Rule 54(b) On Teradata's** 17 **Technical Trade Secret And Tying Claims**

18 Rule 54(b) authorizes district courts to "direct entry of a final judgment as to one or more,  
19 but fewer than all, claims" if the court "determines that there is no just reason for delay." Fed. R.  
20 Civ. P. 54(b). The rule "provide[s] a practical means of permitting an appeal to be taken from  
21 one or more final decisions on individual claims, in multiple claims actions, without waiting for  
22 final decisions to be rendered on all the claims in the case." *Sears, Roebuck & Co. v. Mackey*,  
23 351 U.S. 427, 435 (1956). The requirements of Rule 54(b) are met here.

24 *First*, this Court's grant of summary judgment on Teradata's technical trade secret and  
25 tying claims is an "ultimate disposition" of "individual claim[s]" in a multi-claim action. *Curtiss-*  
26 *Wright Corp. v. Gen. Elec. Co.*, 446 U.S. 1, 7 (1980). There is "no question" that an order  
27 granting summary judgment on a claim is a "final" disposition of that claim under Rule 54(b).  
28 *Wood v. GCC Bend, LLC*, 422 F.3d 873, 879 (9th Cir. 2005). And Teradata's tying and technical

1 trade secret claims are “individual claim[s]” that are “separate and distinct” from the remaining  
 2 claims. *Ariz. State Carpenters Pension Tr. Fund v. Miller*, 938 F.2d 1038, 1040 (9th Cir. 1991).  
 3 An “individual claim” is one that arises from a particular “set of facts giving rise to legal rights in  
 4 the claimant,” even if “some facts are common to” other, still-pending claims. *Pakootas v. Teck*  
 5 *Cominco Metals, Ltd.*, 905 F.3d 565, 575 (9th Cir. 2018) (quotation marks omitted). While  
 6 Teradata’s technical and business trade secret claims both involve alleged trade secrets, they are  
 7 based on distinct factual allegations. Teradata’s technical trade secret claims arise from SAP’s  
 8 alleged misappropriation of Teradata’s database features that SAP allegedly learned during the  
 9 parties’ Bridge Project. By contrast, the business trade secret claims are based on SAP’s alleged  
 10 use of Teradata’s allegedly confidential competitive information allegedly obtained from former  
 11 Teradata employees who took jobs at SAP.

12 *Second*, there are no “reasons to delay the appeal of” Teradata’s technical trade secret and  
 13 tying claims. *Curtiss-Wright*, 446 U.S. at 8. In making this determination, courts consider  
 14 “judicial administrative interests” such as “whether the claims under review [a]re separable from  
 15 the others remaining to be adjudicated and whether the nature of the claims already determined  
 16 [is] such that no appellate court would have to decide the same issues more than once even if  
 17 there were subsequent appeals.” *Id.* The ultimate inquiry is whether Rule 54(b) certification  
 18 “will aid ‘expeditious decision’ of the case.” *Texaco, Inc. v. Ponsoldt*, 939 F.2d 794, 797 (9th  
 19 Cir. 1991) (quoting *Sheehan*, 812 F.2d at 468).

20 Those considerations favor an immediate appeal here. Teradata’s technical trade secret  
 21 and tying claims are separable from the business trade secret claims or patent counterclaims  
 22 remaining to be tried. That trial would include issues such as whether Teradata’s allegedly  
 23 confidential competitive information and strategies are protected trade secrets, whether SAP  
 24 misappropriated those alleged trade secrets, and whether Teradata’s products infringe SAP’s two  
 25 remaining patents. For much the same reasons, immediate appeal of Teradata’s technical trade  
 26 secret and tying claims would not require the court of appeals to “decide the same issues more  
 27 than once” even if there were subsequent appeals. *Curtiss-Wright*, 446 U.S. at 8. Courts have  
 28 routinely granted Rule 54(b) certification in cases with far more overlap between the adjudicated

1 and unadjudicated claims. *See, e.g., Int'l Longshore & Warehouse Union v. ICTSI Ore., Inc.*, 863  
 2 F.3d 1178, 1186 (9th Cir. 2017) (affirming Rule 54(b) certification of antitrust counterclaim  
 3 where counterclaim “involve[d] distinct points of law” from pending labor-law claims even  
 4 though “the factual issues involved in [the antitrust] claim are closely tied to the factual issues in  
 5 the labor-law claims”).

6 Good reason exists to enter partial final judgment now. An immediate appeal, along with  
 7 a stay of the remaining claims, will “minimize[] the likelihood of multiple trials.” *Intel Corp. v.*  
 8 *Tela Innovations, Inc.*, No. 3:18-CV-02848-WHO, 2021 WL 783560, at \*10 (N.D. Cal. Mar. 1,  
 9 2021). Further, if the court of appeals upholds this Court’s summary judgment decision, “the  
 10 parties will have certainty” on the claims and issues remaining in this proceeding. *Id.* And “[i]f  
 11 that ruling is reversed, the case will be remanded and proceed to trial sooner than it would have if  
 12 the appeal were delayed pending resolution of the other issues.” *Id.* Certification under Rule  
 13 54(b) therefore would promote judicial economy and benefit both parties.

14 **B. This Court Should Stay Teradata’s Business Trade Secret Claims And SAP’s**  
 15 **Patent Counterclaims Pending Resolution Of The Rule 54(b) Appeal**

16 If this Court grants Rule 54(b) certification on Teradata’s technical trade secret and tying  
 17 claims, it should also stay Teradata’s business trade secret claims and SAP’s remaining patent  
 18 counterclaims pending the outcome of that appeal.

19 A district court’s “power to stay proceedings is incidental to the power inherent in every  
 20 court to control the disposition of the causes on its docket with economy of time and effort for  
 21 itself, for counsel, and for litigants.” *Landis v. N. Am. Co.*, 299 U.S. 248, 254 (1936). Courts  
 22 regularly exercise this authority to stay proceedings on the remaining claims pending resolution  
 23 of an appeal under Rule 54(b). *See Doe v. Univ. of Cal.*, No. C-92-2284 SAW, 1993 WL 361540,  
 24 at \*2 (N.D. Cal. Sept. 2, 1993). The Ninth Circuit has identified at least three factors relevant to  
 25 whether a stay is warranted: (1) “the possible damage which may result from the granting of a  
 26 stay,” (2) “the hardship or inequity which a party may suffer in being required to go forward,”  
 27 and (3) “the orderly course of justice measured in terms of the simplifying or complicating of  
 28 issues, proof, and questions of law which could be expected to result from a stay.” *Lockyer v.*

1 *Mirant Corp.*, 398 F.3d 1098, 1110 (9th Cir. 2005) (quoting *CMAX, Inc. v. Hall*, 300 F.2d 265,  
 2 268 (9th Cir. 1962)). This third factor involves consideration of whether a stay would promote  
 3 “judicial economy.” *Fuller v. Amerigas Propane, Inc.*, No. 09-2616 TEH, 2009 WL 2390358, at  
 4 \*2 (N.D. Cal. Aug. 3, 2009).

5 All three factors weigh in favor of staying Teradata’s business trade secret claims and  
 6 SAP’s patent counterclaims. *First*, as this is a stipulation, neither party will suffer prejudice from  
 7 a stay while Teradata’s appeal is pending.

8 *Second*, both parties will be prejudiced if they must go forward with a trial on Teradata’s  
 9 business trade secret claims and SAP’s patent counterclaims. If those claims proceed to trial and  
 10 Teradata prevails in whole or in part in its Rule 54(b) appeal, the parties will have to pursue a  
 11 second jury trial on Teradata’s technical trade secret and/or tying claims. But if the Court stays  
 12 the business trade secret claims and patent counterclaims pending Teradata’s appeal, at most only  
 13 a single jury trial will be required whatever the outcome of the appeal. *See id.* at \*11 (staying  
 14 claim pending Rule 54(b) appeal to avoid possible need for second jury trial).

15 *Third*, and for similar reasons, considerations of judicial economy favor a stay of  
 16 Teradata’s business trade secret claims and SAP’s patent counterclaims. A stay would preserve  
 17 judicial resources by avoiding a potential second trial if Teradata’s appeal is successful. *See id.*  
 18 (noting that “[a] stay of all other claims pending appeal” under Rule 54(b) “minimizes the  
 19 probable burden for the parties, counsel, and this court” and “ensures that issues are tried in the  
 20 most efficient way”).

### 21 **III. CONCLUSION**

22 For these reasons, Teradata and SAP jointly request that the Court (1) enter final judgment  
 23 under Rule 54(b) on Teradata’s technical trade secret and tying claims; (2) stay Teradata’s  
 24 business trade secret claims and SAP’s patent counterclaims pending Teradata’s appeal; and (3)  
 25 stay any filing of a bill of costs or motion for award of fees based on the Rule 54(b) final  
 26 judgment pending Teradata’s appeal and until a time set by the Court after conclusion of that  
 27 appeal.

28 IT IS SO STIPULATED, THROUGH COUNSEL OF RECORD.

1  
2 Dated: November 19, 2021

MORRISON & FOERSTER LLP

3 /s/ Mark L. Whitaker

4 Mark L. Whitaker

5 Attorneys for Plaintiffs and Counterclaim-  
6 Defendants TERADATA CORPORATION,  
7 TERADATA US, INC., and TERADATA  
OPERATIONS, INC.

8 Dated: November 19, 2021

JONES DAY

9 /s/ Tharan Gregory Lanier

10 Tharan Gregory Lanier

11 Attorneys for Defendant/Counterclaim Plaintiff  
12 SAP SE and Defendants SAP AMERICA,  
13 INC. and SAP LABS, LLC  
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**ECF ATTESTATION**

I, Mark L. Whitaker, am the ECF User whose ID and password are being used to file this document. In compliance with Civil Local Rule 5-1(i)(3), I hereby attest that concurrence in the filing of this document has been obtained from each of the other signatories.

Dated: November 19, 2021

MORRISON & FOERSTER LLP

/s/ Mark L. Whitaker

Mark L. Whitaker

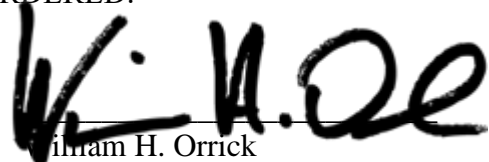
Attorneys for Plaintiffs and Counterclaim-  
Defendants TERADATA CORPORATION,  
TERADATA US, INC., and TERADATA  
OPERATIONS, INC.



**[PROPOSED] ORDER**

Before the Court is the parties' Stipulation to Certify Judgment Under Federal Rule of Civil Procedure 54(b) and to Stay Case Pending Appeal. The Court finds that there is a final disposition on Teradata's technical trade secret and tying claims and that there is no just reason to delay entry of judgment, as doing so will benefit judicial administration. Final judgment under Federal Rule of Civil Procedure 54(b) is entered on Teradata's technical trade secret and tying claims. Teradata's business trade secret claims and SAP's patent counterclaims are stayed pending Teradata's appeal. Deadlines to file any bill of costs or motions for award of fees are also stayed pending Teradata's appeal. IT IS SO ORDERED.

Dated: November 22, 2021



William H. Orrick  
United States District Judge